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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,682	10/27/2003	Joseph Wittemer	ATM-2360	2063
217 7590 03/17/2009 FISHER, CHRISTEN & SABOL 1120 20TH STREET, NW, SOUTH TOWER, SUITE 750 WASHINGTON, DC 20036				
EXAMINER GEHMAN, BRYON P				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
03/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/692,682

Applicant(s)

WITTEMER, JOSEPH

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 10, 11 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 10, 11 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 5, 2009 has been entered.
2. Claims 18 and 19 are objected to because of the following informalities: In both claims 18 and 19, line 3 of each, "on outward-facing side" is ungrammatical. In claim 18, line 4, "on inward-facing side" is also ungrammatical. Appropriate correction is required.
3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 18 and 19, line 2 of each, 'a metal or ceramic middle layer' is alternatively indefinite, rendering what the claimed invention comprises. The phrasing should be changed to --a middle layer of one of metal and ceramic--. Similarly, in lines 3-4 of each claim, "a sealing lacquer layer or a sealing polyolefin film" is also alternatively indefinite, and should be changed to --one of a sealing lacquer layer and a sealing polyolefin film--. Also in lines 3 and 5 of each claim,

the indefinite alternative phrasing "metal or ceramic" is unnecessary for clarity or consistency, and should be deleted.

In claim 19, lines 4-5, "the inward-facing metal or ceramic middle layer" lacks antecedent basis, and it appears it is the --inward-facing side of the middle layer-- that is intended.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 5, 10 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Counts et al. (5,341,930) in view of Kaufmann (5,389,415). Counts et al. disclose a packaging bag (Figures 1 and 2) with a front wall (14) and a rear wall (12) in which the front wall and rear wall are bonded together along a peripheral edge (column 6, lines 39-47), each of the front wall and the rear wall being continuous and uninterrupted so as to not have any hole therein, at least one of the front wall and rear wall bonded to a cover film (16) which is printed on one or both sides, substantially the entire area of the cover film being bonded to and peelable from the at least one of the front wall and rear wall, and at least one of the front wall and rear wall of the packaging bag printed on the outside of the bag (at 20). Counts et al. do not disclose a portion of the cover film permanently bonded to the packaging film. However, Kaufmann discloses

a substantial portion of a cover film (2) bonded to and peelable from a package and a remaining portion (5) of the cover film permanently bonded to a packaging bag in an edge area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the packaging bag of Counts et al. with the peelable and permanent seal combination teaching of Kaufmann as claimed, as such a modification would predictably permanently retain the cover film with the bag of Counts et al., yet allow its substantial peeling to ascertain text hidden beneath the cover film, as suggested by Kaufmann.. "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int 'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396.

As to claim 2, Counts et al. disclose a first packaging film (14), a second packaging film (12) and a cover film (16).

As to claim 5, Counts et al. also sets forth the process of manufacture as claimed.

As to claim 10, Counts et al. disclose bonding of the cover film in an edge area.

As to claim 14, Kaufmann further disclose employing permanent adhesive (see column 2, lines 43-55).

As to claim 15, since the prior art combination discloses printing in general, and applicant discloses register printing to be known in the field, to employ the commonly known register printing process would have been obvious to one of ordinary skill in the art and would fail to define any new and unexpected result by its employment.

7. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Muir Jr. et al. (6,767,604).

Muir Jr. et al. disclose the front wall and the rear wall of a similar bag being of the same packaging film by folding (see column 3, lines 46-61). To provide the front and rear walls of Counts et al. as folded portions of the same material would have been obvious, as it is well-known in the bag field to provide a bag by folding a single sheet, as disclosed by Muir Jr. et al..

8. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 16 and 17 above, and further in view of any one of Marbler et al. (6,726,363), Koch et al. (6,955,842) and Evans et al. (4,058,632). The previous combination does not disclose the particulars of the packaging film packaging film. However, disclose a packaging bag comprised of a packaging film composed of a middle layer (see column 2, line 22 through column 3, line 30; layer 2; layer III; respectively) of one of metal and ceramic, a plastic layer (see column 2, line 22 through column 3, line 30; layer 1; layer IV) on an outward-facing side of the middle layer and one (see column 2, line 22 through column 3, line 30; layer 3; layer IIB) of a sealing lacquer or sealing polyolefin film on an inward-facing side of the middle layer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a packaging bag of the previous combination with a layer structure as claimed, as such a modification would predictably provide a packaging bag to advantageously hold a particular content in the manner suggested by any one of

Marbler et al., Koch et al. (6,955,842) and Evans et al.. "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int 'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396. The laminate appears varied in applicants' disclosure, the particular selection based on particular content being within the level of ordinary skill in the art.

9. Applicant's arguments filed December 31, 2008 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant maintains to believe that any modification of one reference with the teaching of another "destroys" the modified reference. This argument can be used for any construction, as employing applicant's rationale, any change in an existing structure "destroys" the existing structure. The examiner, nor the Patent Office, recognizes that any modification destroys a base reference by it merely being modified. Thinking in a common sense way, would replacing a container with an entirely removable closure on a container with a hinged or tethered closure "destroy" the container? Not in the examiner's vision, it would just change the capabilities of the container in an expected way. The modification of Counts et al. in view of Kaufman is also maintained to be

obvious in order to obtain a non-removable cover. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kaufman discloses a printed cover film being reusably peelable from a bag and resecurable thereto, to render the packaging bag recoverable by the printed cover film, which is what is desired by applicant in his packaging bag.

The added claims to the particular laminate appear to be a conventional arrangement within the filed of providing laminated packages, and appropriate additional references have been added.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Bryon P. Gehman/
Primary Examiner, Art Unit 3728

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG